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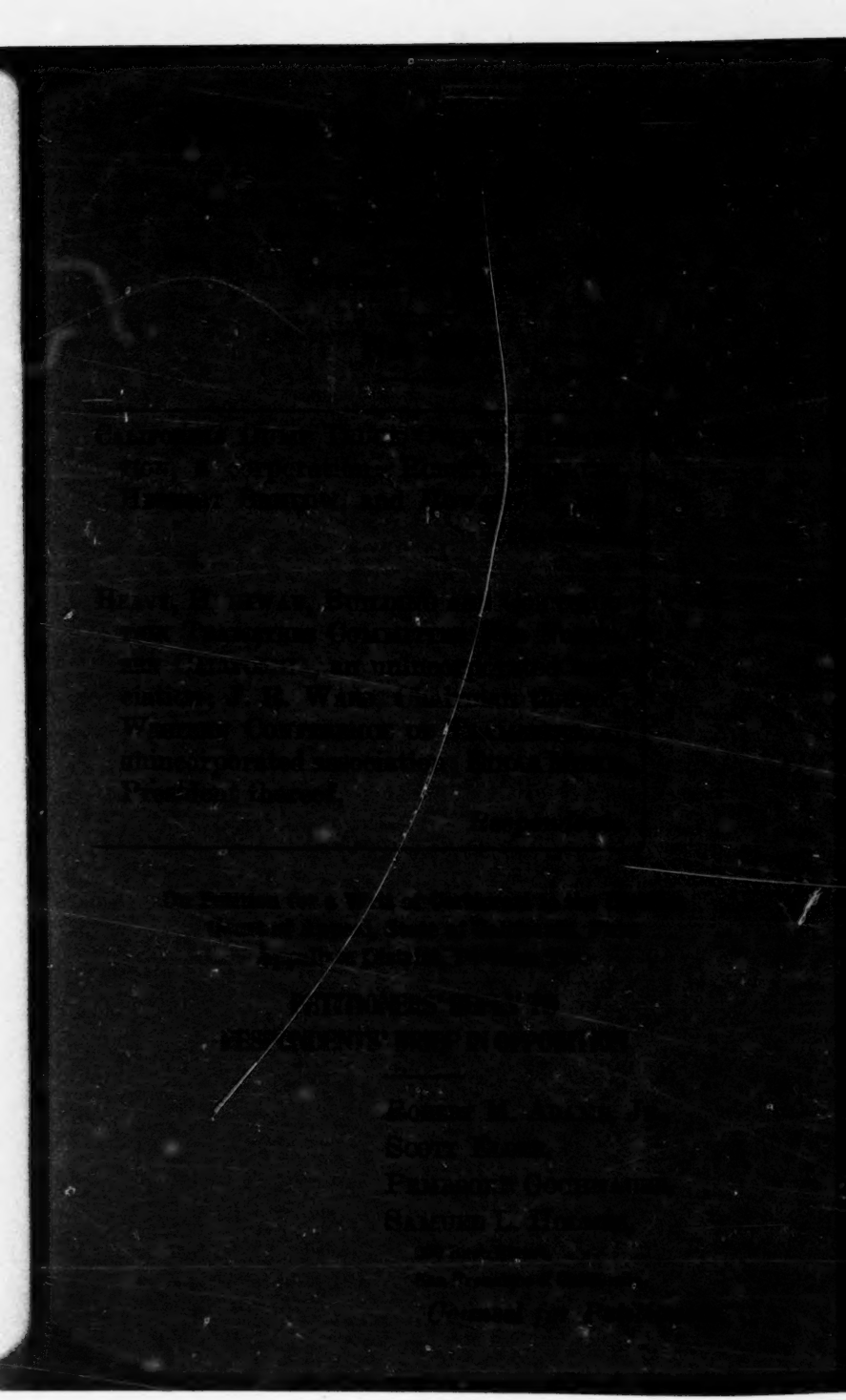

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Table of Authorities Cited

Cases	Pages
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1962

No. 457

CALIFORNIA DUMP TRUCK OWNERS ASSOCIATION, a corporation; ROBERT BRIERLEY, HERBERT BEHLOW, and HOWARD T. FRY,
Petitioners,

vs.

HEAVY, HIGHWAY, BUILDING AND CONSTRUCTION TEAMSTERS COMMITTEE FOR NORTHERN CALIFORNIA, an unincorporated association; J. R. WARD, Chairman thereof; WESTERN CONFERENCE OF TEAMSTERS, an unincorporated association; EINAR MOHN, President thereof,
Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, State of California, First Appellate District, Division Two

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

ARGUMENT

1. Respondents' Brief in Opposition does not discuss and hence does not dispute our contention that, there being no facts disclosing any arguable relationship between the subject matter of the Modifying Agreement and any authorized subject of collective bargaining, the Court below misinterpreted and misapplied the *Oliver* (358 U.S. 283, 362 U.S. 605) and *Garmon* (359 U.S. 236) decisions when in effect it denied state jurisdiction to adjudicate that issue. (Pet. for Writ of Cert., pp. 13-21.) Resting their opposition to certiorari primarily upon reiteration of the California court's declaration that the Modifying Agreement does concern wages, hours and other terms and conditions of employment, respondents make no answer at all to this other important ground of the petition.

2. Respondents' insistence that the subject of the Modifying Agreement is within the area of exclusive federal jurisdiction reflects the need for clarification as to when an activity must be deemed clearly enough within the protection of Section 7 or prohibition of Section 8 to require a state court to decline jurisdiction with respect to it.

Respondents apparently contend that collective bargaining to change the owner-operators' status from regulated self-employed independent contractors to employees, the admitted intent and effect of the clause (Brief, p. 3), must reasonably be deemed to come within the protection of the Act because use of owner-operators as independent contractors is, or rightly or

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wrongly is believed to be, a scheme or device to evade union wages and working conditions. But respondents do not answer our contention that there are no facts to support a conclusion that it is such a device or has any adverse effect on employed drivers. They advance nothing corresponding to the evidence in the *Oliver* case (358 U.S. at 291-292) as to the controversy regarding the use of equipment-leasing to break down the union wage scale. Respondents mention "problems created by the impact of the use of owner-operators on a contractor's employees" (Brief, p. 3) but no showing is referred to that any such problems or impact exist. They offer no explanation how, in view of the regulation to which the California owner-operators are subject as carriers, respondents can plausibly believe that the owner-operators' status as independent contractors is prejudicial to contractors' employees, nor do they point to anything of record declaring or implying that respondents do believe this.

Essentially, then, it is respondents' position that their mere averment that the provision is the product of protected and required collective bargaining deprives the state of jurisdiction. The Court below concurs, at least when the resulting provision is contained in a collective bargaining agreement and is phrased in terms modeled after one passed on by this Court. The California Supreme Court in an earlier case was of the view that use of the term "arguably" was not meant to imply that "a litigant can cause a state court to lose jurisdiction merely by the assertion that the particular activity is" protected or pro-

hibited, but must have meant "susceptible of reasonable argument." *(Gruenwald-Marx, Inc. v. Los Angeles Joint Board* (1959), 52 Cal. 2d 568, 584; 343 P. 2d 23, 32.) The Seventh Circuit Court of Appeals has held that a mere incidental effect on employees is not enough to place an activity within the National Labor Relations Board's exclusive primary jurisdiction. *(Jewel Tea Co., Inc. v. Local Unions, Etc., Amalgamated Meat Cutters & Butcher Workmen of North America,* (1960), 274 F.2d 217.)

Here, plainly, is a recurring problem of significant importance on which there is disagreement and uncertainty. Certiorari in this case would provide an opportunity for needed clarification.

It is respectfully prayed, therefore, that writ of certiorari be granted.

Dated, San Francisco, California,
October 31, 1962.

Respectfully submitted,
ROBERT M. ADAMS, JR.,
SCOTT ELDER,
PEMBROKE GOCHNAUER,
SAMUEL L. HOLMES,
Counsel for Petitioners.

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